

## REAL ESTATE SALES CONTRACT

**THIS REAL ESTATE SALES CONTRACT** (“Contract” or “Agreement”), made this \_\_\_\_ day of \_\_\_\_, 2001, by and among \_\_\_\_\_, as debtor-in-possession (“Seller”), \_\_\_\_\_ (“Purchaser”), and the Escrow Agent specified on the last page of this Contract (“Escrow Agent”).

**1. AGREEMENT TO PURCHASE.** In consideration of the mutual covenants herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller, pursuant to the terms and conditions hereinafter set forth, the land described on Exhibit “A” attached hereto (the “Land”) and incorporated herein by reference on which Seller operates a "Facility" (hereinafter defined), all buildings and improvements situated thereon (the “Improvements”), machinery, equipment and fixtures owned by Seller located in or on the land and used in connection with the Facility (the “Personal Property”), inventory and supplies owned by Seller and located within the Facility (the “Inventory”); (the Land, Improvements, Facility, Personal Property and Inventory shall hereinafter be collectively referred to as the “Property”) but excluding that certain property described on Exhibit “B” attached hereto (the “Excluded Property”). If Purchaser is one or more individuals, Purchaser represents that Purchaser is at least 18 years old and is legally able to enter into this Contract and be bound by it. If Purchaser is not an individual (but is a partnership, corporation or other entity), Purchaser represents that execution, delivery and performance of this contract are within Purchaser’s power and have been duly authorized by all necessary and proper action. Seller represents that execution, delivery and performance of this contract are within Seller’s power and have been duly authorized by all necessary and proper action. “Facility” means the golf course or driving range, ice skating facility, family entertainment center or other facility; if any, situated on the Land.

**2. PURCHASE PRICE.** The purchase price for the Property (excluding the Inventory, which shall be paid for as provided in Section 16 below) is \$\_\_\_\_\_ (the “Purchase Price”), payable as follows:

(a) \$\_\_\_\_\_, representing the initial earnest money deposit (the “Deposit”) and being equal to ten percent (10%) of the Purchase Price, shall be delivered by Purchaser to Escrow Agent simultaneously with the execution of this Contract. This payment is being made by a certified or cashier's check in the amount of the Deposit made payable on its face to Escrow Agent. Escrow Agent shall deposit the Deposit in a non-interest bearing account and, except as otherwise set forth herein, shall pay the Deposit to the order of Seller at Closing to be credited against the Purchase Price.

(b) The balance of the Purchase Price, \$\_\_\_\_\_, shall be paid by Purchaser directly to the order of Seller by wire transfer, certified or bank check at Closing, subject to the credits, adjustments and prorations as hereinafter provided.

This Contract is not contingent upon Purchaser's ability to obtain financing, and in no event is this Contract subject to Purchaser obtaining financing from any third party.

**3. CLOSING.** (a) The Closing shall take place in the office of Escrow Agent at the location specified on the last page of this Contract, or at such other place within the state where the Property or Escrow Agent is located, as designated by the Escrow Agent, in its sole discretion, on a date specified by Seller which shall be no later than the tenth (10th) business day after entry of the order (the “Approval Order”) of the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) presiding over Seller's chapter 11 cases (captioned In re Randall's Island Family Golf Centers, Inc., et al., Case Nos. 00 B 41065 through 00 B 41196 (SMB) (the “Chapter 11 Cases”)) authorizing and approving the sale and conveyance of the Property free and clear of all liens, claims and encumbrances (except Permitted Exceptions)

pursuant to and in accordance with section 363(b) and (f) of title 11 of the United States Code (the "Bankruptcy Code"), subject in any event to Permitted Exceptions, if any.

(b) At Closing, Seller shall deliver to Purchaser :

(i) a Deed in the form attached hereto as Exhibit "C" (the "Deed") which shall convey title to the Property in accordance with Section 8 hereof;

(ii) a bill of sale covering the Personal Property and Inventory (if any) in the form attached hereto as Exhibit "D";

(iii) [Intentionally Omitted]

(iv) an Assignment of Lessor's Interest in Leases and Assumption Agreement in the form attached hereto as Exhibit "F" executed by Purchaser and Seller, if and to the extent there are any tenants of the Property under leases in the possession of Seller. To the extent there are any other occupants or tenants of the Property, Purchaser shall take title subject to any and all rights, whether known or unknown, of such occupants or tenants;

(v) an Assignment of Licenses and Permits and Assumption Agreement in the form attached hereto as Exhibit "G" executed by Purchaser and Seller, if and to the extent any licenses, permits, and certificates concerning the Property are assignable without cost to Seller, and such assignment is permitted by applicable law; and

(vi) a certified copy of the Approval Order.

Notwithstanding the foregoing, no right, title or interest in the Excluded Property is being sold or will be transferred by Seller to Purchaser under this Contract.

4. **TAXES AND ADJUSTMENTS.** (a) The following items shall be adjusted and apportioned between Seller and Purchaser as of 11:59 p.m. on the day before the date of Closing:

- (i) Ad valorem property taxes, water, sewer, vault charges and other utility charges and any other charges for municipal services, the value of fuel stored on the Property, rents, license fees, concession fees and security deposits, if any,. If the exact amount of ad valorem taxes for the year in which the Closing occurs is not known at Closing, the proration of the taxes for the year in which the Closing occurs will be based on the prior year's taxes and shall be conclusive, with no subsequent adjustment. In the event that any tax appeals shall be ending with respect to the Property as of the Closing Date for the current year and/or any prior years, Purchaser agrees to continue to prosecute those appeals diligently, utilizing the attorneys heretofore retained by Seller for that purpose. The parties agree that all refunds, credits, attorneys fees and disbursements from such appeals and from any newly filed tax appeals for the current year and/or any past years, will be apportioned on the basis of the periods before and after the Closing Date to which the refund or credit applies. The provisions of this Section shall survive the Closing hereunder.
- (ii) Prepaid items, including prepaid lessons, token keys, gift certificates, ice time, birthday party deposits and the like issued, held or sold by Seller prior to Closing and redeemable by customers after the Closing (collectively, "Prepaid Claims"). Such adjustment shall be based upon Seller's good faith estimate of the amount of

such items and the portion thereof which shall remain unused as of the Closing Date, which estimate or closing adjustment is not intended to be an exact apportionment, but shall be binding on the parties hereto. Purchaser agrees to assume, discharge, honor and perform in accordance with the terms thereof all such Prepaid Claims, which agreement shall survive Closing.

(b) Purchaser shall use its reasonable efforts (without being required to bring suit or take other legal action) to assist Seller in collecting, and shall promptly remit to Seller the proceeds of, all accounts receivable, if any, which are attributable to the period up to and including the Closing Date and which remain outstanding on the Closing Date. Any collections from any account debtor who is an account debtor on any of such accounts receivable shall be credited against the account of such account debtor in the order the accounts receivable owing therefrom were invoiced. Purchaser shall not have any interest in or to any of Seller's accounts receivable and shall not assign, pledge or grant a security interest in any of the same to any third party or claim a security interest or right in or to any of the same, and Purchaser's obligations to make payment to Seller of the collections thereof shall not be subject to any set-off whatsoever.

(c) Seller and Purchaser shall each notify all utility providers servicing the Property that as of the Closing Date, all bills for such services shall be sent to Purchaser and that Seller shall have no further liability therefor. Seller shall be responsible for the payment of all such utility costs for the period of time prior to the Closing Date and shall be entitled to obtain the refund of any utility deposits or escrows established or maintained by Seller prior to Closing.

**5. CLOSING COSTS.** At Closing, Purchaser shall pay the premium for the owner's policy of title insurance in accordance with Section 8 below, any survey desired by Purchaser, legal fees and expenses of Purchaser's counsel, all transfer, stamp, sales, personal property or similar state, federal or local tax attributable to the transfer of the Property to Purchaser by Seller and all

recording fees for recording the Deed. All other expenses incurred by Seller or Purchaser with respect to the consummation of the transaction contemplated by this Contract, are to be borne and paid exclusively by the party incurring same.

**6. DISCLAIMER OF WARRANTIES; "AS-IS" CONVEYANCE.** (a) PURCHASER WARRANTS AND ACKNOWLEDGES TO AND AGREES WITH SELLER THAT PURCHASER IS PURCHASING THE PROPERTY IN AN "AS-IS" CONDITION WITH ALL FAULTS AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES, EITHER EXPRESS OR IMPLIED, OF ANY KIND, NATURE OF OR ON BEHALF OF SELLER. Purchaser acknowledges that Purchaser has not relied, and is not relying, upon any information, document, sales brochure, due diligence/property information package or other literature, map or sketch, projection, pro forma statement, representation, guarantee or warranty (whether express or implied, or oral or written, material or immaterial) that may have been given by or made by or on behalf of or omitted by the Seller with respect to (i) the quality, nature, adequacy or physical condition of the Property including, but not limited to, the structural elements, foundation, slab, roof, appurtenances, access, landscaping, parking facilities or the electrical, mechanical, HVAC, refrigeration systems, plumbing, sewage or utility systems, facilities or appliances or underground pipes or tanks at the Property, if any; (ii) the quality, nature, adequacy or physical condition of soils, surface waters, wells or ground water at the Property; (iii) the existence, quality, nature, adequacy or physical condition of any utilities serving the Property; (iv) the development potential of the Property, its habitability, merchantability or fitness, suitability or adequacy of the Property for any particular purpose; (v) the zoning or other legal status of the Property, including but not limited to, condemnation or threat of condemnation; (vi) the Property's or its operation's compliance with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions or restrictions of any governmental or quasi governmental entity; (vii) the Property's or its operation's compliance with any applicable labor laws or building codes concerning labor and materials used

or incorporated into the Property or any other labor or materials relating in any way to the Property; or (viii) the condition of title to the Property or the nature, status and extent of any right of way, lease, right of redemption, possession, lien, encumbrance, license, reservation, covenant, condition, restriction or any other matter affecting title to the Property. Purchaser shall accept title subject to all notices of violations of law of governmental ordinances, orders or requirements issued on or prior to the Closing Date.

(b) PURCHASER ACKNOWLEDGES TO, AND AGREES WITH, SELLER THAT WITH RESPECT TO THE PROPERTY, SELLER HAS NOT AND DOES NOT AND WILL NOT MAKE ANY WARRANTIES OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO ANY WARRANTY OF CONDITION, MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR USE OR WITH RESPECT TO THE VALUE, PROFITABILITY OR MARKETABILITY OF THE PROPERTY OR WITH RESPECT TO COMPLIANCE OF THE PROPERTY WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAW, RULE, REGULATION, ORDER OR REQUIREMENT, INCLUDING BUT NOT LIMITED TO THOSE PERTAINING TO THE HANDLING, GENERATING, TREATING, STORING OR DISPOSING OF ANY HAZARDOUS WASTE OR SUBSTANCE.

(c) Purchaser acknowledges that it is Purchaser's responsibility to make such legal, factual and other inquiries and investigations as Purchaser deems necessary, desirable or appropriate with respect to the Property. Such inquiries and investigations may include, but shall not be limited to, any leases and contracts, pertaining to the Property, the physical components of all portions of the Property, the condition of the Property, the existence of any wood destroying organisms on the Property, such state of facts as an accurate survey and inspection would show, the present and future zoning ordinances, resolutions and regulations of the municipality, county and state where the Property is located and the value and marketability of the Property.

(d) Without in any way limiting the generality of the preceding subparagraphs (a) through (c), Purchaser specifically acknowledges and agrees that Purchaser hereby waives, releases and forever discharges any claim it has, might have in the future, had or may have against the Seller and/or Seller's agent with respect to the condition of the Property, either patent or latent, Purchaser's ability or inability to obtain or maintain building permits, either temporary or final certificates of occupancy or other licenses for the use or operation of the Property, and/or certificates of compliance for the Property, the actual or potential income or profits derived or to be derived from the Property, the real estate taxes or assessments now or hereafter payable thereon, the compliance with any environmental protection, pollution or land use laws, rules, regulations or requirements and any other state of facts which exist with respect to the Property.

(e) Purchaser does hereby release, and forever discharge Seller, its employees, representatives, agents, sub-agents, successors and assigns from any and all claims for damages and other causes of action at law or equity for injury, destruction, loss or damage of any kind or character, to the person or property of Purchaser and Purchaser's employees, agents and representatives arising out of or in any way relating to any of the foregoing matters referred to in this Section 6.

(f) Seller shall not be obligated to pay any sums or perform any work to any portion of the Property including, but not limited to any work which may now or hereafter be required to cause the Property to be in compliance with the requirements of the Americans with Disabilities Act or any other laws.

(g) The provisions of this Section 6 shall survive Closing or any termination of this Contract.

**7. PROPERTY INSPECTION.** If Purchaser desires to inspect, examine or survey the Property after the date hereof, Purchaser may do so until Closing, at Purchaser's risk. Inspection will be at Seller's discretion and must be scheduled in advance with Seller. It is specifically



understood that Purchaser will not have access at any time to said Property except at the convenience of the Seller and in the company of a representative of Seller. Purchaser agrees to indemnify, defend and hold Seller harmless from any against any loss, cost, claim, damage or expense, including reasonable attorneys' fees, court costs and disbursements incurred, directly or indirectly, by Seller or to the Property as a result of Purchaser's inspection, examination or survey of the Property, either prior to, on, or after the date hereof. The provisions of this Section 7 shall survive Closing or any termination of this Contract.

**8. TITLE.** (a) Seller agrees to convey and Purchaser agrees to accept such title to the Property as is insurable by the title company identified on Exhibit "H" attached hereto (or if no such Exhibit is attached, then the title company shall be Fidelity National Title Insurance Company of New York, or its affiliate (in any event, the "Title Company") as set forth in the title commitment attached hereto as Exhibit "H" (the "Commitment"), if any, on its standard form and at standard rates, subject to (i) all standard exclusions and printed exceptions set forth in the standard form of owner's policy of title insurance, (ii) encroachments and all other matters that would be disclosed by a current and accurate survey of the Property; (iii) all laws, rules and ordinances of any Federal, state or local agency, bureau, department or commission having jurisdiction affecting the Property and liens, fines or penalties arising therefrom; (iv) violations of laws, ordinances or requirements of any Federal state or local agency and liens, fines or penalties arising therefrom; (v) liens for taxes and assessments not yet due and payable, and the lien for any other assessments; (vi) easements for public utilities affecting the Property; (vii) all easements, covenants, restrictions, encumbrances, agreements and rights-of-way affecting the Property and any obligations arising therefrom; (viii) any applicable zoning ordinances, other land use laws and regulations, together with taxes for the current year; (ix) the matters and exceptions to title set forth on Exhibit "H" attached hereto, if any such exhibit is attached hereto (x) any new matter or exception that first comes into existence after the date of the Commitment, except that Seller agrees that Seller will not hereafter voluntarily encumber the Property without Purchaser's

consent, consent not to be unreasonably withheld; (xi) leases, licenses, concessions and other rights of tenants or other persons in possession; (xii) the lien of any unpaid franchise or corporation tax or estate tax with respect to any corporation or individual in the chain of title; and (xiii) any matters which are waived by Purchaser. The foregoing matters referred to or described in parts (i) through (xiii) are herein referred to as the "Permitted Exceptions". While Purchaser may elect to use any title company it chooses, Seller has only agreed to deliver such title as the Title Company will insure in accordance with the Commitment and subject to Permitted Exceptions and other matters set forth in this Contract. Seller is not obligated to remove any Permitted Exceptions. If Purchaser uses another title commitment and/or another title insurer, Purchaser shall deliver a copy of such other title commitment to Seller no later than two (2) days from the date of this Contract, such date being TIME OF THE ESSENCE. If such other title commitment is not delivered by such date, Purchaser shall be required to use the Commitment and obtain its title insurance from the Title Company. Should Purchaser elect to use a title company other than the Title Company or not purchase title insurance, Purchaser shall reimburse Seller at Closing for the cost of the Commitment prepared by the Title Company including, without limitation any title commitment charges, search fees, copy fees, and/or cancellation charges. Notwithstanding anything to the contrary contained herein, Seller shall not be required to provide any Commitment and Purchaser's obligations under this Contract shall not be affected thereby.

(b) If Seller is unable or unwilling to convey title to the Property in accordance with the preceding subsection (a), or to arrange for the Title Company to insure over the material exceptions which are not Permitted Exceptions to an extent which is commonly and customarily acceptable to prudent purchasers and lenders, Purchaser may either waive such exceptions or give written notice to Seller and Escrow Agent, within seven days of the date of the Contract of such defect in title, whereupon Seller may, at its option, attempt to cure such defect prior to the Closing or decline to cure such defect. If Seller is unable or unwilling to cure or to obtain affirmative title coverage on or before the Closing Date any defect as to which Purchaser has

notified Seller as hereinabove provided, and if Purchaser does not waive such defect, this Contract shall be terminated without liability to either party and the Deposit shall be returned to Purchaser. Notwithstanding the foregoing, Seller shall have the right, at its sole election, to extend the Closing Date by not more than thirty (30) days to attempt to cure any defect in title objected to by Purchaser in accordance with this Section 8(b). Seller shall give Purchaser five (5) days prior notice of the new Closing Date.

(c) At the sole option of Seller, Seller may use any portion of the cash balance of the Purchase Price on the Closing Date to pay or discharge any lien or encumbrances that are not Permitted Exceptions. As an alternative, Seller may deposit sufficient monies with the Title Company acceptable to and required by it to assure their discharge, but only if the Title Company will insure Purchaser's title to the Property clear of such matters or insure against their enforcement out of the Property. Upon notice (by telephone or otherwise) given not less than two (2) business days before the Closing Date, Purchaser shall provide separate certified or official bank checks requested to assist in clearing up these matters.

**9. ASSESSMENTS.** If as of the date hereof, the Property or any part thereof, shall be or shall have been affected by an assessment or assessments for improvements, then Purchaser shall be responsible for payment of any such assessments against the Property and such assessments shall be paid by Purchaser as they become due. The provisions of this Section 9 shall be without prejudice to Purchaser's right to protest or contest any such assessment, and shall survive Closing.

**10. CONDITIONS PRECEDENT TO PURCHASER'S AND SELLER'S OBLIGATIONS TO CLOSE.** (a) Purchaser's obligation to consummate the Closing hereunder is conditioned upon satisfaction of the following conditions at or prior to Closing:

- (i) Seller shall have delivered the documents required pursuant to Section 3 above;

(ii) The Title Company shall have delivered to Purchaser its Commitment to issue a title policy in an amount at least equal to the Purchase Price (exclusive of the Inventory Price described in Section 16 below) insuring Purchaser's title to the Property subject only to the Permitted Exceptions and any other matters waived by Purchaser; and

(iii) the Approval Order shall have been entered by the Bankruptcy Court.

(b) Seller's obligation to consummate the Closing hereunder is conditioned upon satisfaction of the following conditions at or prior to Closing:

(i) Purchaser shall have had made the deliveries required pursuant to Section 2 hereof;

(ii) Purchaser shall not have failed to perform or comply in any material respect with any of its agreements, conditions or obligations in the manner and by the dates set forth herein and all of Purchaser's representations and warranties shall have been true and correct in all material respects as of the date made;

(iii) the Approval Order shall have been entered by the Bankruptcy Court; and

(iv) The Escrow Agent shall have delivered the Deposit to Seller.

(c) In the event that any of the above conditions are not satisfied at or prior to Closing, the party to this Contract whose obligations are conditioned upon the satisfaction of such conditions may terminate this Contract by notice delivered to the other party at or prior to Closing, provided however, if the failure to satisfy such condition is due to the default of the party required to satisfy same, the other party may pursue its remedies under Section 11 hereof. If this Contract is so terminated by either party pursuant to a right expressly given to it hereunder (and not by the default of the other party) then this Contract shall be deemed and be canceled, the

Deposit shall be promptly returned to Purchaser and the parties shall have no further obligations under this Contract except for those which are expressly stated to survive the termination thereof.

**11. DEFAULT.** (a) Seller shall be in default hereunder if following notice to Seller, Seller shall fail to comply with or perform in the manner required in this Contract in any material respect any covenant, agreement or obligation on its part to be complied with or performed and such failure shall continue unremedied for fifteen (15) days after notice thereof from Purchaser. Except as hereinafter specifically provided to the contrary, if Seller shall be in default hereunder, Purchaser (in lieu of prosecuting an action for damages or proceeding with any other legal course of conduct, the right to bring such actions or proceedings being expressly and voluntarily waived by Purchaser, to the extent legally permissible, following and upon advice of its counsel) shall have the right (i) to seek to obtain specific performance of Seller's obligations hereunder, provided that any action for specific performance shall be commenced within ten (10) days after such default, or (ii) to promptly receive a return of the Deposit. If Purchaser fails to commence an action for specific performance within ten (10) days after such default, Purchaser's sole remedy shall be to receive a return of the Deposit. Upon such return and delivery, this Contract shall terminate and neither party hereto shall have any further obligations under this Contract other than those which are expressly stated to survive the termination thereof.

(b) Purchaser shall be in default hereunder if Purchaser shall fail to comply with or perform within the time limits and in the manner required in this Contract (or in any other contract or agreement between Purchaser and Seller or any affiliate of Seller) in any material respect any covenant, agreement or obligation on its part to be complied with or performed and any conditions to the performance by Purchaser of its obligations hereunder have been satisfied. In the event of a default by Purchaser hereunder, Seller may terminate this Contract by notice to Purchaser at or prior to the Closing, in which event Seller shall be entitled to receive the Deposit as liquidated damages in full satisfaction of any claims against Purchaser hereunder; provided, however, that the foregoing shall not limit any claims that Seller may have against Purchaser

based on Purchaser's failure to comply with any post-Closing obligation or any instrument delivered at Closing.

(c) As an inducement to Seller to enter into this Contract, Purchaser agrees that notwithstanding anything to the contrary expressly or by implication provided in this Contract, (i) TIME SHALL BE OF THE ESSENCE with respect to the performance by Purchaser of its obligations under this Contract by the dates and within the time periods set forth in this Contract, (ii) the failure of Purchaser to perform its obligations under this Contract by the dates and within the time periods set forth in this Contract shall be a material default under this Contract, and (iii) Purchaser shall not be entitled to any adjournment(s) of the times or dates by which Purchaser is required to perform its obligations under this Contract; except that Purchaser may request one or more adjournments of the Closing Date, provided that the aggregate period of time the Closing may be adjourned by reason thereof shall not exceed two (2) business days.

**12. BUILDING AND ZONING LAWS.** Seller makes no representation about the zoning of the Property or its legal uses. Seller makes no representation about whether the Property has a certificate of occupancy. In some jurisdictions a certificate of occupancy or other certificates (e.g., lead paint certification, smoke detector affidavit, etc.) may also be required upon the transfer of title to the Property. If any such certificates or certifications are required to be obtained in order for the Property to be transferred to Purchaser by Seller, Purchaser shall obtain such certificates prior to Closing at Purchaser's sole cost and expense and provide evidence reasonably satisfactory to Seller at Closing that such certificates have been obtained. If any violations at the Property should be required to be corrected by the municipality or other work performed at the Property in order to obtain a certificate permitting the transfer of the Property, Purchaser shall correct and/or perform same at Purchaser's sole cost and expense. Purchaser shall indemnify, defend and hold Seller harmless from and against all fines, penalties, costs, expense, claims and liabilities arising out of or relating to Purchaser's failure to timely obtain any such certificate if one is required, and this indemnity shall survive the Closing.

**13. CASUALTY AND CONDEMNATION.** (a) The risk of loss to the Property from fire or other casualty shall belong to Purchaser. In the event of such loss or damage, Seller shall assign to Purchaser all proceeds due under the insurance policies carried by Seller, if any, and shall give Purchaser a credit, at Closing, in the amount of the deductible under any such policy. Nothing herein contained shall obligate Seller to maintain insurance coverage.

(b) If a material portion of the Property is taken by condemnation or eminent domain prior to Closing, Purchaser or Seller shall have the right to terminate this Contract by notice to the other given within five (5) days after notice of the condemnation or taking. As used herein, the term "material portion" shall mean a portion of the Property that is such that Purchaser would be unable to continue the use of the Property as it is presently utilized. If neither party elects to terminate as aforesaid, the Closing shall occur without abatement of the Purchase Price and Purchaser shall be entitled to receive any award payable by the condemning authority.

**14. BROKERAGE.** Purchaser represents to Seller that it has not dealt with any broker or finder in connection with this Contract or the transactions contemplated hereby other than \_\_\_\_\_ ("Purchaser's Broker"). Purchaser acknowledges that Seller has retained Keen Realty Consultants Inc. ("Seller's Broker") as its broker and Seller shall pay the commissions due Seller's Broker. Purchaser acknowledges that if Purchaser uses a purchaser broker, Purchaser shall pay all the commission fees and charges charged by the purchaser broker. Purchaser shall indemnify Seller and hold Seller harmless from any claim, loss, liability, damage, cost or expense (including, without limitation, reasonable attorneys' fees, disbursements and court costs) paid or incurred by Seller by reason of any claim to any broker's commission (other than Seller's Broker), finder's fee or other fee in connection with this Contract or the transaction contemplated hereby, unless such claim is due solely to the acts of Seller. The parties' obligations under this Section 14 shall survive the termination of this Contract.

**15. OVERBID PROCEDURES.** Seller and Purchaser acknowledge that, under the Bankruptcy Code, sale of the Property is, and the respective obligations of Seller and Purchaser under this Contract are, subject to Bankruptcy Court Approval. Seller and Purchaser acknowledge that to obtain such approval the Seller must demonstrate that it has taken reasonable steps to obtain the highest and best price possible for the Property, including, but not limited to, giving notice of the transaction contemplated by this Contract to creditors and other interested parties as ordered by the Bankruptcy Court, providing information about the Property to responsible bidders, entertaining higher and better offers from responsible bidders and, if necessary, conducting an auction.

**16. INVENTORY.** In addition to the Purchase Price, in consideration for the Inventory included in the Property, Purchaser shall pay Seller at Closing an amount (the "Inventory Price") equal to one-half (1/2) of the cost to Seller of such Inventory, determined as herein provided. Seller shall provide Purchaser with a schedule of estimated Inventory prior to Closing, including on such schedule the cost to Seller of such Inventory. The information set forth on such schedule is intended to be Seller's estimate of the Inventory expected to be on hand on or about the Closing Date. Such information is not intended and may not be an accurate accounting of the Inventory as of the Closing Date. As such, Seller makes no representation or warranty that all of the items set forth on the Inventory shall in fact exist at the Facility on the Closing Date. Nonetheless, such schedule shall be deemed binding and conclusive as to the parties hereto and shall constitute the definitive determination of the Inventory Price. Notwithstanding anything to the contrary contained in this Contract, Seller shall have the right to withdraw from the Property being sold by Seller pursuant to this Contract, all or such portion of the Inventory as Seller may determine in its sole discretion prior to Closing. In that event, Purchaser shall not be required to pay to Seller any amount for such Inventory as Seller expressly notifies Purchaser that Seller shall have withdrawn from this sale.



**17. MANNER OF PAYMENT.** All checks to be delivered by or on behalf of Purchaser to Seller at Closing shall be drawn on a Federally or State chartered bank or savings and loan association, and shall be unendorsed, good certified checks of the Purchaser, or bank or teller's checks without restrictions, payable to the direct order of Seller or such person(s) or entity(s) as Seller may direct; provided, however, that upon at least two (2) days prior notice from Seller, Purchaser shall pay such balance at Closing by wire transfer of funds pursuant to instructions given by Seller. Notwithstanding the foregoing, the net amount of Closing Adjustments, if due to Seller, up to \$1,000, may be paid by Purchaser's ordinary check, subject to collection.

**18. NOTICES.** All notices under this Contract shall be deemed delivered when personally delivered or mailed postage prepaid, certified or registered mail, return receipt requested, or when delivered by a nationally recognized overnight counter service to the addresses set forth next to the signature of each party below. A copy of all notices given hereunder shall also be delivered to Escrow Agent and to Golenbock, Eiseman, Assor & Bell, 437 Madison Ave., New York, New York 10022 Attention: Jonathan Flaxer, Esq. and Jonathan S. Hacker, Esq.

**19. WAIVER.** No failure or delay on the part of Seller in exercising any right of Seller, and no action on the part of Seller or any course of dealing or partial performance shall be deemed a waiver of an right of Seller set forth herein or a modification of any terms set forth herein.

**20. ENTIRE AGREEMENT; AMENDMENT.** This written Contract and Exhibits attached hereto constitute the entire and complete agreement between the parties hereto and supersede any prior oral or written agreements between the parties with respect to the Property. This Contract may not be amended, altered, modified or discharged, nor may any provision of this Contract be waived, except by an instrument in writing signed by Purchaser and an appropriate officer of Seller (and by Escrow Agent to the extent such modification, amendment or waiver would alter the duties or obligations of Escrow Agent hereunder).

**21. HEADINGS.** The paragraphs or section headings herein are for convenience of reference only and shall not be deemed to vary the content of this Contract or the covenants, agreements, representations and warranties herein set forth or limit the provisions or scope thereof.

**22. SEVERABILITY.** The invalidity of any provision of this Contract shall not affect the validity or enforceability of any other provision set forth herein.

**23. ASSIGNMENT.** Purchaser may not assign this Contract or Purchaser's rights hereunder without the prior written consent of Seller, which consent may be given or withheld in Seller's sole discretion.

**24. COUNTERPART EXECUTION.** This Contract may be executed in several counterparts each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument. A fully executed facsimile copy of this Agreement shall be treated as an original.

**25. BINDING EFFECT.** This Contract shall be binding upon and inure to the benefit of the parties hereto, and their respective successors, personal representatives, legal representatives, heirs and permitted assigns.

**26. GOVERNING LAW.** This Contract and the rights and obligations hereunder and the provisions hereof shall be governed by and construed in accordance with the federal law of the United States of America and in the absence of controlling federal law, in accordance with the laws of the state wherein the Property is located. All disputes arising out of or related to this Contract, including, without limitation, any dispute relating to the interpretation, meaning or effect of any provision hereof, will be resolved in the Bankruptcy Court and the parties hereto each submit to the exclusive jurisdiction of the Bankruptcy Court for the purposes of adjudicating any such dispute, to the extent the jurisdiction of the Bankruptcy Court is available.

**27. ESCROW AGENT.** (a) The Deposit shall be held by Escrow Agent, in escrow, on the terms hereinafter set forth. Escrow Agent shall deposit all the monies in a non-interest bearing account in a bank located in the state where the Property is located or where the Escrow Agent is located, at the discretion of the Escrow Agent, provided, however, that in the event the Deposit has not been released or applied towards the Purchase Price as of the Closing Date, pursuant to this Contract, the Deposit shall be moved to an interest bearing account, with the interest to be paid to the party ultimately entitled to the Deposit, provided the parties each provide a completed and executed Internal Revenue Service Form W-9 to the Escrow Agent.

(b) If any check delivered by Purchaser is not paid, Escrow Agent shall immediately deliver any monies held to Seller and the escrow shall terminate. At Closing, Escrow Agent shall deliver the escrowed monies to Seller and the escrow shall terminate. Escrow Agent shall make disbursements as instructed by written instructions signed by both Seller and Purchaser directing Escrow Agent to disburse funds. Purchaser and Seller may deliver joint instructions to Escrow Agent or may deliver separate instructions directing identical actions by the Escrow Agent. Seller or Purchaser may give Escrow Agent instructions, as to the disbursement of funds (with a copy of such notice given simultaneously to the other party), in which event, Escrow Agent shall have the right to disburse the Deposit in accordance with the instructions received by it, provided that, within three (3) days thereafter, Escrow Agent shall not have received a notice from the party that had not given such instructions, disputing Escrow Agent's proposed disbursement of funds. In the event that, within such 3-day period, Escrow Agent shall receive a notice disputing the disbursement of the deposit in accordance with the original instructions received by Escrow Agent, Escrow Agent shall not follow any disbursement instructions except in accordance with subsequent joint instructions from Seller or Purchaser or separate instructions from Seller and Purchaser directing identical actions by Escrow Agent, but shall proceed under this Section 27 as if no such instructions had been given.

(c) The funds received by Escrow Agent in accordance with these escrow provisions are sometimes referred to as the "Escrowed Property." The Escrow Agent shall not be under any duty to give the Escrowed Property any greater degree of care than it gives its own similar property and shall not be required to invest any funds. Notwithstanding anything in these escrow provisions to the contrary, in the event Escrow Agent determines that there is a dispute concerning the disbursement or distribution of any Escrowed Property prior to its disbursement or distribution, Escrow Agent may elect to (1) make such disbursement or distribution as Escrow Agent believes in good faith complies with the terms of these escrow provisions; or (2) continue to hold the Escrowed Property and disburse or distribute it when Escrow Agent either receives a written notice signed by the parties directing disposition of the Escrowed Property or a final, non-appealable judgment or order of a court of competent jurisdiction; or (3) interplead the other parties to these escrow provisions and take such other actions as may comply with law, including, without limitation, delivery of the Escrowed Property into court or as directed by a court.

(d) Except with respect to claims based upon willful misconduct that are successfully asserted against the Escrow Agent, the parties hereto shall jointly defend (by attorneys selected by the Escrow Agent), indemnify and hold harmless the Escrow Agent (and any successor) and its partners, members, employees and agents from and against any and all losses, liabilities, claims, actions, judgments, damages and expenses arising out of or in connection with its acceptance of, or the performance of its duties and obligations under, these escrow provisions as well as the reasonable costs and expenses of defending against any claim or liability arising out of or relating to these escrow provisions. This indemnity includes, without limitation, disbursements and reasonable attorneys' fees either paid to attorneys or representing the fair value of legal services rendered by the Escrow Agent to itself solely in connection with such dispute or litigation. Without intending to limit any of the foregoing, Seller shall pay Escrow Agent's fees for its services as such

(e) The Escrow Agent shall not be liable for any error of judgment, or any action taken by it or omitted to be taken by it hereunder, except in the case of its willful misconduct, nor shall it be liable for the default or misconduct of any employee, agent or attorney appointed by it who shall have been selected with reasonable care. The Escrow Agent shall be entitled to consult with counsel of its choosing (which may include its own members and employees) and shall not be liable for any action taken, suffered or omitted by it in good faith and in accordance with the advice of such counsel.

(f) The parties acknowledge that Escrow Agent is merely a stakeholder and has no interest in the Escrowed Property. Upon delivery of the Escrowed Property into court or as a court shall direct, Escrow Agent shall be fully released from all liability and obligations with respect to the Escrowed Property.

(g) Escrow Agent shall be entitled to represent a party in any lawsuit. The parties acknowledge that the Escrow Agent may have acted and may continue to act as attorney for one of the parties, and nothing in these escrow provisions shall be construed to prohibit the Escrow Agent from continuing to so act in the future. This includes, without limitation, acting in any suit, action, or proceeding brought by a party to recover any Escrowed Property or any other matter affecting either party. To the extent there is any conflict of interest between the parties or between Escrow Agent and one party and/or the other, the conflict is waived.

(h) The Escrow Agent shall be entitled to rely upon any order, judgment, certification, demand, notice, instrument or other writing delivered to it hereunder without being required to determine the authenticity or the correctness of any fact stated therein or the propriety or validity thereof (including, without limitation, the validity of any service). The Escrow Agent may act in reliance upon any instrument or signature believed by it in good faith to be genuine (including, without limitation, a photocopy or facsimile thereof) and may assume, if in good faith, that any

person purporting to give notice or receipt or advice or make any statement or execute any document in connection with the provisions hereof has been duly authorized to do so.

(i) (1) Escrow Agent, and any successor escrowee, may resign on seven days written notice to the other parties. Within the seven day period, the other parties shall designate a successor escrowee and notify Escrow Agent of the designated successor. If they fail to do so by the end of the seven day period, Escrow Agent may designate a nationally recognized title insurance company, bank or trust company as the successor escrowee, or Escrow Agent may deposit the Escrowed Property with the court or as a court may direct, or Escrow Agent may continue to hold the Escrowed Property as custodian in accordance with part (ii) below. The parties agree that they will be jointly and severally liable to pay any fees charged by any title insurance company, bank or trust company to act as successor escrowee, and between themselves, the parties agree to each pay one-half the fees of any such successor escrowee. If Escrow Agent designates a title insurance company, bank or trust company as successor escrowee, the parties shall agree to any standard escrow provisions the title insurance company, bank or trust company customarily requires, and if there is any conflict between the escrow provisions in these escrow provisions and the additional provisions required by the title insurance company, bank or trust company, the additional provisions shall prevail. If a successor escrowee is designated in accordance with this subsection to Escrow Agent's satisfaction, Escrow Agent shall deliver the Escrowed Property to the successor escrowee. Notwithstanding anything in these escrow provisions to the contrary, on notice to the parties, Escrow Agent may take any other steps as Escrow Agent, in its sole discretion, may elect to terminate its duties as Escrow Agent pursuant to these escrow provisions.

(2) From the effective date of Escrow Agent's resignation through the date of delivery of the Escrowed Property to a successor escrowee or to the court or at the court's direction: (i) Escrow Agent shall retain the Escrowed Property as custodian unless otherwise

jointly directed in writing by the parties; and (ii) all of the terms of the Escrow Agreement, other than Escrow Agent's obligation to deliver the Escrowed Property shall continue to apply.

(j) The parties acknowledge that the Escrow Agent is acting solely as a stakeholder at their request, for their convenience, and as an accommodation. The Escrow Agent shall not be deemed to be the agent of either of the parties for the purposes of the escrow, and Escrow Agent shall not be liable to either of the parties for any act or omission, error of judgment, or mistake on its part unless taken in bad faith and in willful disregard of these escrow provisions. In the absence of manifest error, Escrow Agent's disposition of the Escrowed Property shall be presumed in compliance with these escrow provisions.

(k) Escrow Agent shall not be bound or in any way affected by any modification or cancellation of the escrow provisions of this Agreement unless the modification shall be satisfactory to Escrow Agent and approved by Escrow Agent in writing. Except as otherwise provided herein, the escrow provisions may be canceled, modified or amended only by a written instrument executed by the parties and Escrow Agent. The duties and obligations of the Escrow Agent shall be determined solely by the express provisions of these escrow provisions and the Escrow Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth in these escrow provisions. No implied duties or obligations shall be read into this Agreement against the Escrow Agent. These escrow provisions are binding on the parties and the Escrow Agent, and their respective heirs, successors, administrators and assigns. The Escrow Agent shall not be in any way affected by any fact or circumstance affecting or alleged to affect rights or liabilities hereunder unless notice of the same is delivered to the Escrow Agent in writing signed by the proper parties to the Escrow Agent's satisfaction.

(l) Escrow Agent has executed this Contract solely in order to confirm that the Escrow Agent is holding the Deposit and will hold the Deposit in escrow pursuant to the provisions hereof.

(m) If Escrow Agent is a title insurance company, bank or trust company, the parties agree to execute any additional escrow provisions customarily required by the title insurance company, bank or trust company.

**28. NO RECORDATION.** In no event shall Purchaser record this Contract or any Memorandum hereof and any such recordation or attempted recordation shall constitute a breach of this contract by Purchaser.

**29. POSSESSION.** Possession will be delivered to Purchaser by delivery of the Deed at Closing, subject, however, to the provisions of this Contract.

**30. SURVIVAL.** (a) Except as otherwise expressly provided in this Contract, no representations, warranties, covenants or other obligations of Seller set forth in this Contract shall survive Closing or termination of this Contract, and no action based thereon shall be commenced after Closing or termination of this Contract.

(b) The delivery of the Deed by Seller, and the acceptance thereof by Purchaser, shall be deemed the full performance and discharge of every obligation on the part of Seller to be performed hereunder, except those obligations of Seller which are expressly stated in this Contract to survive the Closing.

[The balance of this page has intentionally been left blank.]



IN WITNESS WHEREOF, the parties hereto have duly executed this Contract, as of the  
day and year first above written.

ADDRESS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SELLER:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PURCHASER:

\_\_\_\_\_  
Name:

Tax Identification No. \_\_\_\_\_

ADDRESS:

\_\_\_\_\_  
\_\_\_\_\_  
Telephone No. \_\_\_\_\_  
Fax No. \_\_\_\_\_  
Tax I.D.  
No. \_\_\_\_\_

If a Corporation:

\_\_\_\_\_ a \_\_\_\_\_ corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ADDRESS:

\_\_\_\_\_  
\_\_\_\_\_  
Telephone No. \_\_\_\_\_  
Fax No. \_\_\_\_\_  
Tax I.D. No. \_\_\_\_\_

If a Partnership:

\_\_\_\_\_, a \_\_\_\_\_  
partnership, by its duly authorized general partner(s)

By: \_\_\_\_\_

Name: \_\_\_\_\_

General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

General Partner

**PURCHASER - COMPLETE THIS INFORMATION**

NAME OF PURCHASER'S ATTORNEY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE NO.: \_\_\_\_\_

FAX NO.: \_\_\_\_\_

Escrow Agent

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Tel. No. \_\_\_\_\_

Fax No. \_\_\_\_\_

336845

01/23/011:10 PM01/23/011:10 PM01/23/01

Exhibit A

Land

Exhibit B

Excluded Personal Property

1. Cash and cash equivalents.
2. Accounts receivable owned by Seller for the sale of services completed prior to Closing.
3. Such Inventory as is withdrawn by Seller pursuant to Section 16 of this Contract.
4. All leased equipment, machinery and personalty.
5. All intellectual property of Seller.
6. All funds, accounts, instruments, documents, general intangibles (including trademarks, trade names, and symbols used in connection therewith) arising from or by virtue of any transactions related to the Property that occurred or arose before the Closing.
7. Monetary deposits, that Seller has been required to give to any public or private utility with respect to utility services furnished to the Property.
8. All lettering on signs located on the Property that refer to "Family Golf Centers" "SkateNation", "Sports Plus" or otherwise refer to intellectual property of the Seller, and Purchaser hereby agrees that the same shall be removed by Purchaser at Purchaser's cost within thirty (30) days of Closing. If Purchaser has not removed such lettering within thirty (30) days after Closing, Seller may, but shall not be required to, cause such lettering to be removed at Purchaser's cost and expense, which Purchaser shall promptly pay to Seller upon Purchaser's receipt of a statement therefor. If Purchaser does not pay such statement within ten (10) days after the date such statement is sent to Purchaser, the amount set forth on such statement shall bear interest at the rate of twelve percent (12%) per annum from the date of such statement until paid in full. This obligation shall survive the Closing.
9. Nortel (Baynetworks) Router, Model ARN
10. Rewards Club ERNEX, terminal, printer, scanner and COM switch
11. Liquor license [if applicable]
12. Beer/liquor/wine. [if applicable]
13. Equipment shared with other entertainment facilities. [if applicable]

Exhibit C

**DEED**

**THIS INDENTURE**, made the      day of \_\_\_\_\_, 2001 BY AND BETWEEN  
\_\_\_\_\_, the party of the first part, and  
\_\_\_\_\_, the party of the second part.

**WITNESSETH**, that the party of the first part, in consideration of One Dollar (\$1.00) paid by the party of the second part, does hereby remise, release and quitclaim unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

**ALL** right, title and interest of the party of the first part in and to that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being more particularly described on Exhibit A annexed hereto and made a part hereof.

**TOGETHER**, with all right, title and interest, if any, of the party of the first part in and to any streets and road abutting the above described premises to the center lines thereof; **TOGETHER** with the appurtenances and all the estate and rights of the party of the first part in and to said premises; **TO HAVE AND TO HOLD** the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

**IN WITNESS WHEREOF**, the party of the first part has duly executed this deed the day and year first above written.

**IN PRESENCE OF:**

**[GRANTOR]**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name:  
Title:

[Appropriate state form of acknowledgement to be attached]

[Deed to be modified at closing to conform to state law requirements for quitclaim deeds]

Exhibit D

Bill of Sale

**BILL OF SALE**

\_\_\_\_\_, a \_\_\_\_\_, having an office at \_\_\_\_\_  
 (“Seller”), in consideration of Ten Dollars (\$10.00) and other good and valuable consideration  
 paid to Seller by \_\_\_\_\_, a \_\_\_\_\_ having an address at  
 \_\_\_\_\_ (“Purchaser”), the receipt and sufficiency of which are hereby  
 acknowledged, hereby sells, conveys, assigns, transfers, delivers and sets over to Purchaser all of  
 the right, title and interest of Seller in and to all Personal Property, but excluding the Excluded  
 Property (as such terms are defined in that certain Real Estate Sales Contract (the “Real Estate  
 Contract”) dated as of \_\_\_\_\_, 2001 by and between Seller and Purchaser).

TO HAVE AND TO HOLD unto Purchaser and its successors and assigns to its and their  
 own use and benefit forever.

The transfer provided for herein is made by Seller "As Is" and without recourse and  
 without any expressed or implied representation or warranty whatsoever.

[\_\_\_\_\_]

By:\_\_\_\_\_

Name:

Title:

Dated: As of \_\_\_\_\_, 2001

Exhibit E

[Intentionally Omitted]

Exhibit F

Assignment of Lessor's Interest  
in Leases and Assumption Agreement

\_\_\_\_\_ (“Assignor”), for and in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, paid to Assignor by \_\_\_\_\_ (“Assignee”), does hereby transfer, assign, set over and quitclaim, without recourse and without representation or warranty of any kind or nature whatsoever, express or implied, all right, title and interest of Assignor in and to those certain leases attached hereto and hereby made a part hereof (the “Leases”) including any and all interests Assignor may have in all refundable tenant security deposits made under such Leases, including, without limitation, all letters of credit or other security provided in lieu of cash deposits, to the extent such security deposits are in the possession of Assignor.

Assignee hereby assumes the Leases, and agrees to perform and keep all covenants, agreements and obligations arising therefrom and under related state statutes, including, without limitation, the refund of all refundable security deposits held in respect thereto which have been delivered or credited to Assignee, and to indemnify and hold harmless Assignor from and against any and all claims, demands, causes of actions, judgments, liabilities, costs and expenses which may be asserted or recovered against Assignor arising out of or relating or pertaining to the assigned Leases and security deposits (including, without limitation, attorneys’ fees and costs incident thereto).

IN WITNESS WHEREOF, the Assignor and Assignee have caused this instrument to be executed this \_\_\_\_ day of \_\_\_\_\_, 2001.

ASSIGNOR:

[\_\_\_\_\_]

By:\_\_\_\_\_

Name:

Title:

Attest:

ASSIGNEE:

[\_\_\_\_\_]

\_\_\_\_\_  
Name:

Title:

By:\_\_\_\_\_

Name:

Title



Exhibit G

Assignment of Licenses, Permits and Contracts  
and Assumption Agreement

THIS AGREEMENT is made by and between \_\_\_\_\_ (“Assignor”) to  
\_\_\_\_\_ (“Assignee”).

W I T N E S S E T H:

WHEREAS, Assignee has acquired all of Assignor’s right, title, interest and estate in and to the certain project located in \_\_\_\_\_, \_\_\_\_\_, commonly known as \_\_\_\_\_ (the “Project”), which is more particularly described on Exhibit ”F-1” attached hereto and by this reference made a part hereof;

NOW, THEREFORE, for and in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor does hereby transfer, assign, set over and quitclaim, without recourse and without representation or warranty of any kind or nature whatsoever, express or implied, to Assignee, all of Assignor’s right, title and interest in and to the following described rights, interests and property:

All of Assignor’s right, title and interest, if any, in and to any assignable licenses, permits, contract and agreements relating to the operation of the Project including, but not limited to, those licenses, permits, contracts and agreements identified on Exhibit ”F-2” attached hereto and by this reference made a part hereof (the “Assigned Obligations”) but excluding any Excluded Property, as such term is defined in the Real Estate Sales Contract pursuant to which Assignor and Assignee have entered into this Assignment. To the extent that any such licenses, permits, contracts or agreements require approval of a governmental entity or other third party, and without limiting the other terms and conditions of this Assignment, Assignor makes no representation or warrant as to whether such licenses, permits, contracts and agreements are assignable.

Assignee hereby assumes the Assigned Obligations and agrees to perform and keep all terms, conditions, covenants, agreements, liabilities and obligations to be performed thereunder, and to indemnify and hold harmless Assignor from and against any and all claims, demands, causes of actions, judgments, liabilities, costs and expenses which may be asserted or recovered against Assignor arising out of or relating to the Assigned Obligations (including, without limitation, attorneys’ fees and cost incident thereto).

IN WITNESS WHEREOF, the Assignor and Assignee have caused this instrument to be executed this \_\_\_\_ day of \_\_\_\_\_, 2001.

ASSIGNOR:

[\_\_\_\_\_]

By:\_\_\_\_\_

Name:

Title:

Attest:

ASSIGNEE:

[\_\_\_\_\_]

\_\_\_\_\_  
Name:

Title:

By:\_\_\_\_\_

Name:

Title:

Exhibit H

Title Commitment

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